

House Study Bill 242

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON SWAIM)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to mechanics' liens.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
3 TLSB 1307HC 82
4 rh/gg/14

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1 1 Section 1. Section 572.1, Code 2007, is amended by adding
1 2 the following new subsection:
1 3 NEW SUBSECTION. 1A. "Labor" means labor completed by the
1 4 claimant.
1 5 Sec. 2. Section 572.1, subsections 2, 3, and 5, Code 2007,
1 6 are amended to read as follows:
1 7 2. "Material" shall, in addition to its ordinary meaning,
1 8 include machinery, tools, fixtures, trees, evergreens, vines,
1 9 plants, shrubs, tubers, bulbs, hedges, bushes, sod, soil,
1 10 dirt, mulch, peat, fertilizer, fence wire, fence material,
1 11 fence posts, tile, and the use of forms, accessories, and
1 12 equipment furnished by the claimant.
1 13 3. "Owner" ~~shall include~~ means the record titleholder and
1 14 every person for whose use or benefit any building, erection,
1 15 or other improvement is made, having the capacity to contract,
1 16 including guardians.
1 17 5. "Subcontractor" shall include every person furnishing
1 18 material or performing labor upon any building, erection, or
1 19 other improvement, except those having contracts ~~therefor~~
1 20 directly with the owner, ~~the owner's agent, or trustee.~~
1 21 Sec. 3. Section 572.2, Code 2007, is amended to read as
1 22 follows:
1 23 572.2 PERSONS ENTITLED TO LIEN.
1 24 1. Every person who shall furnish any material or labor
1 25 for, or perform any labor upon, any building or land for
1 26 improvement, alteration, or repair thereof, including those
1 27 engaged in the construction or repair of any work of internal
1 28 or external improvement, and those engaged in grading,
1 29 sodding, installing nursery stock, landscaping, sidewalk
1 30 building, fencing on any land or lot, by virtue of any
1 31 contract with the owner, ~~the owner's agent, trustee,~~
1 32 contractor, or subcontractor shall have a lien upon such
1 33 building or improvement, and land belonging to the owner on
1 34 which the same is situated or upon the land or lot so graded,
1 35 landscaped, fenced, or otherwise improved, altered, or
2 1 repaired, to secure payment for the material or labor
2 2 furnished or labor performed.
2 3 2. If material is rented by a person to the owner, ~~the~~
2 4 ~~owner's agent, trustee,~~ contractor, or subcontractor, the
2 5 person shall have a lien upon such building, improvement, or
2 6 land to secure payment for the material rental. The lien is
2 7 for the reasonable rental value during the period of actual
2 8 use of the material and any reasonable periods of nonuse of
2 9 the material taken into account in the rental agreement. The
2 10 delivery of material to such building, improvement, or land,
2 11 whether or not delivery is made by the person, creates a
2 12 presumption that the material was used in the course of
2 13 alteration, construction, or repair of the building,
2 14 improvement, or land. However, this presumption shall not
2 15 pertain to recoveries sought under a surety bond.
2 16 Sec. 4. Section 572.8, Code 2007, is amended to read as
2 17 follows:
2 18 572.8 PERFECTION OF LIEN.
2 19 A person shall perfect a mechanic's lien by filing with the

2 20 clerk of the district court of the county in which the
2 21 building, land, or improvement to be charged with the lien is
2 22 situated, a verified statement of account of the demand due the
2 23 person, after allowing all credits, setting forth:
2 24 1. The ~~time date~~ when such material was first furnished or
2 25 labor first performed, and ~~when completed the date on which~~
2 26 ~~the last of the material was furnished or the last of the~~
2 27 ~~labor was performed.~~
2 28 2. The ~~correct legal~~ description of the property to be
2 29 charged with the lien.
2 30 3. The name and last known mailing address of the owner,
2 31 ~~agent, or trustee~~ of the property.
2 32 Upon the filing of the lien, the clerk of court shall mail
2 33 a copy of the lien to the owner, ~~agent, or trustee~~. If the
2 34 statement of the lien consists of more than one page, the
2 35 clerk may omit such pages as consist solely of an accounting
3 1 of the material furnished or labor performed. In this case,
3 2 the clerk shall attach a notification that pages of accounting
3 3 were omitted and may be inspected in the clerk's office.
3 4 Sec. 5. Section 572.9, Code 2007, is amended to read as
3 5 follows:
3 6 572.9 TIME OF FILING.
3 7 The statement ~~or of~~ account required by section 572.8 shall
3 8 be filed by a principal contractor or subcontractor within two
3 9 years and ninety days from after the date on which the last of
3 10 the material was furnished or the last of the labor was
3 11 performed. ~~A failure to file the statement or account within~~
3 12 ~~the ninety-day period does not defeat the lien, except as~~
3 13 ~~otherwise provided in this chapter.~~
3 14 Sec. 6. Section 572.10, Code 2007, is amended to read as
3 15 follows:
3 16 572.10 PERFECTING SUBCONTRACTOR'S LIEN AFTER LAPSE OF
3 17 NINETY DAYS.
3 18 ~~After the lapse of the ninety days prescribed in section~~
3 19 ~~572.9, a~~ A contractor or a subcontractor may perfect a
3 20 mechanic's lien pursuant to section 572.8 beyond ninety days
3 21 after the date on which the last of the material was furnished
3 22 or the last of the labor was performed by filing a claim with
3 23 the clerk of the district court and giving written notice
3 24 thereof to the owner, ~~the owner's agent, or trustee~~. Such
3 25 notice may be served by any person in the manner original
3 26 notices are required to be served. If the party to be served,
3 27 ~~the party's agent, or trustee~~, is out of the county wherein
3 28 the property is situated, a return of that fact by the person
3 29 charged with making such service shall constitute sufficient
3 30 service from and after the time it was filed with the clerk of
3 31 the district court.
3 32 Sec. 7. Section 572.11, Code 2007, is amended to read as
3 33 follows:
3 34 572.11 EXTENT OF LIEN FILED AFTER NINETY DAYS.
3 35 Liens perfected under section 572.10 shall be enforced
4 1 against the property or upon the bond, if given, by the owner,
4 2 ~~as hereinafter provided~~, only to the extent of the balance due
4 3 from the owner to the contractor at the time of the service of
4 4 such notice; but if the bond was given by the contractor, or
4 5 person contracting with the subcontractor filing the claim for
4 6 a lien, such bond shall be enforced to the full extent of the
4 7 amount found due the subcontractor.
4 8 Sec. 8. Section 572.13, subsection 1, unnumbered paragraph
4 9 1, Code 2007, is amended to read as follows:
4 10 An owner of a building, land, or improvement upon which a
4 11 mechanic's lien of a subcontractor may be filed, is not
4 12 required to pay the original contractor for compensation for
4 13 work done or material furnished for the building, land, or
4 14 improvement until the expiration of ninety days ~~from~~ after the
4 15 completion of the building or improvement unless the original
4 16 contractor furnishes to the owner one of the following:
4 17 Sec. 9. Section 572.13, subsection 2, unnumbered paragraph
4 18 3, Code 2007, is amended to read as follows:
4 19 An original contractor who fails to provide notice under
4 20 this section is not entitled to the lien and remedy provided
4 21 by this chapter ~~as they pertain to any labor performed or~~
4 22 ~~material furnished by a subcontractor not included in the~~
4 23 ~~notice.~~
4 24 Sec. 10. Section 572.14, subsection 1 and 2, Code 2007,
4 25 are amended to read as follows:
4 26 1. Except as provided in subsection 2, payment to the
4 27 original contractor by the owner of any part or all of the
4 28 contract price of the building or improvement ~~before the lapse~~
4 29 ~~of the ninety days allowed by law for the filing of a~~
4 30 ~~mechanic's lien within ninety days after the date on which the~~

4 31 last of the materials was furnished or the last of the labor
4 32 was performed by a subcontractor, does not relieve the owner
4 33 from liability to the subcontractor for the full value of any
4 34 material furnished or labor performed upon the building, land,
4 35 or improvement if the subcontractor files a lien within ~~the~~
5 1 time provided by law for its filing ninety days after the date
5 2 on which the last of the materials was furnished or the last
5 3 of the labor was performed.

5 4 2. In the case of an owner-occupied dwelling, a mechanic's
5 5 lien perfected under this chapter is enforceable only to the
5 6 extent of the amount balance due the principal contractor by
5 7 the owner-occupant ~~under the contract, less any payments made~~
5 8 ~~by the owner-occupant to the principal contractor~~ prior to the
5 9 owner-occupant being served with the notice specified in
5 10 subsection 3. This notice may be served by delivering it to
5 11 the owner or the owner's spouse personally, or by mailing it
5 12 to the owner by certified mail with restricted delivery and
5 13 return receipt to the person mailing the notice, or by
5 14 personal service as provided in the rules of civil procedure.

5 15 Sec. 11. Section 572.15, Code 2007, is amended to read as
5 16 follows:

5 17 572.15 DISCHARGE OF SUBCONTRACTOR'S LIEN == BOND.

5 18 A mechanic's lien may be discharged at any time by the
5 19 owner, principal contractor, or intermediate subcontractor
5 20 filing with the clerk of the district court of the county in
5 21 which the property is located a bond in twice the amount of
5 22 the sum for which the claim for the lien is filed, with surety
5 23 or sureties, to be approved by the clerk, conditioned for the
5 24 payment of any sum for which the claimant may obtain judgment
5 25 upon the claim. ~~This section applies to any mechanic's lien~~
5 26 ~~perfected under this chapter that has not been discharged as~~
5 27 ~~of March 21, 1986, as well as any mechanic's lien filed on or~~
5 28 ~~after March 21, 1986.~~

5 29 Sec. 12. Section 572.18, Code 2007, is amended to read as
5 30 follows:

5 31 572.18 PRIORITY OVER OTHER LIENS == ~~PRIORITY OF CERTAIN~~
5 32 ~~CONSTRUCTION MORTGAGE LIENS.~~

5 33 1. Mechanics' liens filed by a principal contractor or
5 34 subcontractor within ninety days after the date on which the
5 35 last of the material was furnished or the last of the
6 1 claimant's labor was performed shall be preferred superior to
6 2 all other liens which may attach to or upon a building or
6 3 improvement and to the land upon which it is situated, except
6 4 liens of record prior to the time of the original commencement
6 5 of the claimant's work or the claimant's improvements, except
6 6 as provided in subsection 2.

6 7 2. ~~However, construction~~ Construction mortgage liens shall
6 8 be preferred to all mechanics' liens of claimants who
6 9 commenced their particular work or improvement subsequent to
6 10 the date of the recording of the construction mortgage lien.
6 11 For purposes of this section, a lien is a "construction
6 12 mortgage lien" to the extent that it secures loans or
6 13 advancements made to directly finance work or improvements
6 14 upon the real estate which secures the lien.

6 15 3. The rights of purchasers, encumbrancers, and other
6 16 persons who acquire interests in good faith, ~~and~~ for a
6 17 valuable consideration, and without notice, ~~after the~~
6 18 ~~expiration of the time for filing claims for mechanics' liens~~
6 19 of a lien perfected pursuant to this chapter, are prior
6 20 superior to the claims of all contractors or subcontractors
6 21 who have not, at the dates such rights and interests were
6 22 acquired, filed their claims for such liens perfected their
6 23 liens more than ninety days after the date on which the last
6 24 of the claimant's material was furnished or the last of the
6 25 claimant's labor was performed.

6 26 4. For purposes of this section, "encumbrancers" or
6 27 "purchasers" shall not include lenders who obtain an interest
6 28 in the real estate assignment of a mortgage.

6 29 Sec. 13. Section 572.20, Code 2007, is amended to read as
6 30 follows:

6 31 572.20 PRIORITY AS TO BUILDINGS OVER PRIOR LIENS UPON
6 32 LAND.

6 33 Mechanics' liens, including those for additions, repairs,
6 34 and betterments, shall attach to the building or improvement
6 35 for which the material or labor was furnished or done, in
7 1 preference to any prior lien, encumbrance, or mortgage upon
7 2 the land upon which such building or improvement was erected
7 3 or situated except as provided in sections 572.10 and 572.11.

7 4 Sec. 14. Section 572.21, Code 2007, is amended to read as
7 5 follows:

7 6 572.21 FORECLOSURE OF MECHANIC'S LIEN WHEN LIEN ON LAND.

7 7 In the foreclosure of a mechanic's lien when there is a
7 8 ~~prior superior~~ lien, encumbrance, or mortgage upon the land
7 9 the following regulations shall govern:

7 10 1. LIEN ON ORIGINAL AND INDEPENDENT BUILDING OR
7 11 IMPROVEMENT. If such material was furnished or labor
7 12 performed in the construction of an original and independent
7 13 building or improvement commenced after the attaching or
7 14 execution of such ~~prior superior~~ lien, encumbrance, or
7 15 mortgage, the court may, in its discretion, order such
7 16 building or improvement to be sold separately under execution,
7 17 and the purchaser may remove the same in such reasonable time
7 18 as the court may fix. If the court shall find that such
7 19 building or improvement should not be sold separately, it
7 20 shall take an account of and ascertain the separate values of
7 21 the land, and the building or improvement, and order the whole
7 22 sold, and distribute the proceeds of such sale so as to secure
7 23 to the ~~prior superior~~ lien, encumbrance, or mortgage priority
7 24 upon the land, and to the mechanic's lien priority upon the
7 25 building or improvement.

7 26 2. LIEN ON EXISTING BUILDING OR IMPROVEMENT FOR REPAIRS OR
7 27 ADDITIONS. If the material furnished or labor performed was
7 28 for additions, repairs, or betterments upon any building or
7 29 improvement, the court shall take an accounting of the values
7 30 before such material was furnished or labor performed, and the
7 31 enhanced value caused by such additions, repairs, or
7 32 betterments; and upon the sale of the premises, distribute the
7 33 proceeds of such sale so as to secure to the ~~prior superior~~
7 34 mortgage or lienholder priority upon the land and
7 35 improvements as they existed prior to the attaching of the
8 1 mechanic's lien, and to the mechanic's lienholder priority
8 2 upon the enhanced value caused by such additions, repairs, or
8 3 betterments. In case the premises do not sell for more than
8 4 sufficient to pay off the ~~prior superior~~ mortgage or other
8 5 ~~superior~~ lien, the proceeds shall be applied on the ~~prior~~
8 6 ~~superior~~ mortgage or other ~~superior~~ liens.

8 7 Sec. 15. Section 572.22, subsection 5, Code 2007, is
8 8 amended to read as follows:

8 9 5. The legal description of the property to be charged
8 10 therewith.

8 11 Sec. 16. Section 572.27, Code 2007, is amended to read as
8 12 follows:

8 13 572.27 LIMITATION ON ACTION.

8 14 ~~An Any~~ action to enforce a mechanic's lien ~~may shall~~ be
8 15 brought within two years from the expiration of ~~the ninety~~
8 16 ~~days for filing the claim as provided in this chapter and not~~
8 17 ~~afterwards after the date on which the last of the material~~
8 18 ~~was furnished or the last of the labor was performed.~~

8 19 Sec. 17. Section 572.28, subsection 1, Code 2007, is
8 20 amended to read as follows:

8 21 1. Upon the written demand of the owner, ~~the owner's~~
8 22 ~~agent, or contractor,~~ served on the lienholder requiring the
8 23 lienholder to commence action to enforce the lien, such action
8 24 shall be commenced within thirty days thereafter, or the lien
8 25 and all benefits derived therefrom shall be forfeited.

8 26 Sec. 18. Section 572.33, subsection 1, unnumbered
8 27 paragraph 1, Code 2007, is amended to read as follows:

8 28 ~~Notwithstanding other provisions of this chapter, and in~~
8 29 ~~addition to all other requirements of this chapter, a A~~ person
8 30 furnishing labor or materials to a subcontractor shall not be
8 31 entitled to a lien under this chapter unless the person
8 32 furnishing labor or materials does all of the following:

8 33 EXPLANATION

8 34 This bill relates to a mechanic's lien.

8 35 The bill eliminates owner agents and trustees from the list
9 1 of persons against whom a mechanic's lien may be filed.
9 2 Current law allows the owner, owner's agent, or trustee of the
9 3 property to be charged with a mechanic's lien on property
9 4 affected by construction or improvements by a contractor or
9 5 subcontractor.

9 6 The bill amends the definition of owner to include the
9 7 record titleholder of the property.

9 8 The bill specifies that in order to perfect a mechanic's
9 9 lien, a contractor or subcontractor shall specify, in the
9 10 contractor or subcontractor's statement of account, the date
9 11 on which certain materials were first furnished or when labor
9 12 was first performed and the date on which the last of the
9 13 material was furnished or the last of the labor was performed.
9 14 The bill further specifies that a statement of account shall
9 15 be filed by a contractor or subcontractor with the clerk of
9 16 the district court within two years and 90 days after the date
9 17 on which the last of the material was furnished or the last of

9 18 the labor was performed.
9 19 The bill specifies a contractor or subcontractor may file a
9 20 statement of account beyond 90 days after the date on which
9 21 the last of the material was furnished or the last of the
9 22 labor was performed by filing a claim with the clerk of the
9 23 district court and giving written notice to the owner of the
9 24 property. The bill specifies such a statement of account
9 25 shall be enforced against the property or upon the bond, if
9 26 any, only to the extent of the balance due from the owner to
9 27 the contractor at the time of the service of notice.
9 28 The bill specifies that a payment to the original
9 29 contractor prior to the end of the 90-day period for the lien
9 30 to be filed after completion of the claimant's work does not
9 31 relieve the owner from liability to a subcontractor provided a
9 32 lien is timely filed by the subcontractor and the
9 33 subcontractor complies with the requisite notice provisions.
9 34 The bill specifies that a mechanic's lien filed by a
9 35 principal contractor or subcontractor within 90 days after the
10 1 date on which the last of the material was furnished or the
10 2 last of the claimant's labor was performed shall be superior
10 3 to all other liens which may attach to a building or
10 4 improvement except liens of record which were in place prior
10 5 to the time of the claimant's work or improvements and except
10 6 for construction mortgage liens.
10 7 The bill amends references to "prior" liens to "superior"
10 8 liens in regard to foreclosures of mechanics' liens when there
10 9 is a lien, encumbrance, or mortgage on the property.
10 10 The bill specifies that an action brought to enforce a
10 11 mechanic's lien shall be brought within two years and 90 days
10 12 after the date on which the last of the material was furnished
10 13 or the last of the labor was performed.
10 14 LSB 1307HC 82
10 15 rh:rj/gg/14